

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

In re ACCREDO HEALTH, INC. SECURITIES LITIGATION	) Civil Action No. 03-2216-BBD
	)
	) <u>CLASS ACTION</u>
<hr/> This Document Relates To:	)
ALL ACTIONS.	) LEAD PLAINTIFFS' MOTION <i>IN LIMINE</i> #20 TO PRECLUDE DEFENDANTS FROM INTRODUCING EVIDENCE OF UNRELATED EVENTS THAT OCCURRED AFTER THE END OF THE CLASS PERIOD
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Lead Plaintiffs, Louisiana School Employees' Retirement System and Debra Swiman (together, "Lead Plaintiffs") and the Class of investors who purchased Accredo stock between June 16, 2002 and April 7, 2003, respectfully ask the Court to preclude Defendants from referring to, interrogating any witness concerning, commenting on, or introducing in any way evidence of unrelated events that occurred after the end of the Class Period because they are irrelevant to the issue of whether Defendants committed securities fraud, pursuant to Fed. R. Evid. 401 and are thus inadmissible pursuant to Fed. R. Evid. 402. Additionally, any such evidence could only serve to confuse and mislead the jury, unduly waste time and unfairly prejudice Lead Plaintiffs, and is thus inadmissible pursuant to Fed. R. Evid. 403.

On March 7, 2006, Magistrate Judge Pham issued a Report and Recommendation on Lead Plaintiffs' Motion for Class Certification, recommending that the Court grant the motion. *See* Docket No. 180. Therein, the Class Period was set as June 16, 2002 through April 7, 2003. *Id.* On April 19, 2006, this Court issued an Order, adopting the March 7, 2006 Report and Recommendation of Magistrate Judge Pham and granting Lead Plaintiffs' Motion for Class Certification. *See* Docket No. 191.

Lead Plaintiffs do not claim that Defendants' violation of the federal securities laws continued after the end of the Class Period. Thus, evidence of ***unrelated events*** occurring after April 7, 2003, is irrelevant at trial and is inadmissible under Fed. R. Evid. 401 and 402. Additionally, even assuming *arguendo* that evidence of events occurring after the end of the Class Period ***and*** unrelated to the alleged securities fraud is somehow relevant, its introduction would confuse and mislead the jury, constitute an undue waste of time and unfairly prejudice Lead Plaintiffs. Thus, it is inadmissible under Fed. R. Evid. 403.

The case law regarding the admissibility of extra-class evidence is clear in its guidance. Extra-class information is admissible ***only*** where it confirms what a defendant "should have known

during the class period [and] [a]ny information that sheds light on whether class period statements were false or materially misleading.” *In re Scholastic Corp. Sec. Litig.*, 252 F.3d 63, 72-73 (2d Cir. 2001) (pre-class period data only relevant where it related to what defendants knew during the class period).

Lead Plaintiffs anticipate Defendants will attempt to introduce evidence of and make reference to Accredo’s acquisition by MedCo Health Solutions, Inc. on August 8, 2005 (well over two years after the close of the Class Period) and the purported post-Class Period collections and write-offs of SPS accounts receivable for the purposes of showing the adequacy of the SPS Division’s allowance for doubtful accounts and its compliance with generally accepted accounting principles (“GAAP”) during the Class Period. However, these ***unrelated events*** in no way address what Defendants “should have known during the class period” and do not shed light on “whether class period statements were false or materially misleading.” *Scholastic Corp.*, 252 F.3d at 72-73.

Indeed, this case concerns Accredo’s valuation of the SPS receivables as presented to investors in the Company’s financial statements between June 16, 2002 and April 7, 2003, which Defendants purportedly determined based on ***historical information*** existing at the time each Class Period balance sheet was prepared. Write-off and collection experience that occurred ***after*** the Class Period, by definition, was unknowable to Defendants at the time they issued Accredo’s Class Period financial results. These ***future collection rates***, under different circumstances and conditions, are not relevant to Defendants’ Class Period financial statements and are thus inadmissible. Fed. R. Evid. 401 and 402. Moreover, introduction of this information will only serve to confuse and mislead the jury and is as such inadmissible. Fed R. Evid. 403. Accordingly, collections and write-offs of SPS accounts receivable that occurred ***after*** April 7, 2003 are irrelevant and should be excluded.

Finally, the controlling statute, 15 U.S.C. 78u-4(e), specifically allows for a 90-day “look back” period solely for the purpose of calculating the Class’ recoverable damages. Because of this, Lead Plaintiffs’ motion here does **not** seek to preclude the introduction of the **related** evidence concerning the price or movement of Accredo securities during this 90-day “look back” period.<sup>1</sup>

Accordingly, Lead Plaintiffs respectfully ask that the Court issue an order precluding Defendants from referring to, interrogating any witness concerning, commenting on, or introducing in any way evidence of events unrelated to the claims and defenses in this action that occurred after the end of the Class Period, except for evidence concerning the price or movement of Accredo securities during the 90-day “look back” period dictated by 15 U.S.C. 78u-4(e).

DATED: September 8, 2008

Respectfully submitted,

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<sup>1</sup> Lead Plaintiffs have submitted a concurrent Motion *in Limine* to enforce this 90-day “look back” period. See Lead Plaintiffs’ Motion *in Limine* #19 to Preclude Defendants from Introducing Evidence of the Price or Movement of Accredo Securities After the Statutory 90-Day “Look Back” Period.

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 8, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on September 8, 2008.

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